

### **REMARKS**

In the Office Action dated October 6, 2008, claims 14, 15, 18-20 and 25-29 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gilli in view of Levine. Claims 16, 17, 21 and 24 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gilli and Levine, further in view of Grevis et al.

Applicants note with appreciation the telephone interview courteously afforded the undersigned representative of the Applicants on December 22, 2008. The Examiner's Supervisor, Mr. George Evanisko, also participated in the telephone interview.

In the telephone interview, the projection of dependent claim 18 was discussed, and Applicants proposed to amend independent claim 14 to bring the subject matter of claim 18 therein. The following arguments in support of patentability of such a combination of claims 14 and 18 were discussed at the interview. In the Gilli reference, a method and an apparatus are disclosed for controlling the pulse energy in an implantable device that is designed to treat or control cardiac arrhythmia. In this method and apparatus, bradycardia pacing pulses are normally delivered at a first energy. If and when an antitachycardia therapy or routine is triggered, bradycardia pulses are delivered thereafter at a second energy, which is higher than the first energy. The Examiner acknowledged that the Gilli reference does not disclose that the first mode of operation can include an auto-capture mode. The Examiner relied on the Levine reference as disclosing that it is known to normally operate a pacing pulse generator in an auto-capturer mode, and the Examiner

stated it would have been obvious to a person of ordinary skill in the field of pacemaker design to replace the first mode in the Gilli reference with an auto-capture mode as disclosed in the Levine reference.

With regard to the subject matter of original dependent claim 18, the Examiner did not provide a specific citation to either the Gilli reference or the Levine reference, with respect to the extendable time that is claimed in claim 18, and the extension of that extendable dependent on sensed cardiac activity, as also claimed in original claim 18. Both of those features are now embodied in independent claim 14.

As discussed in the telephone interview, in the Gilli reference, as explicitly stated in the last sentence of the abstract, the aforementioned second energy level is maintained for a *predetermined* period of time, and then the apparatus returns to the normal bradycardia pacing energy. This is also explicitly stated at column 2, lines 54-66 of the Gilli reference. A further repetition of this teaching occurs at column 6, lines 10-16 of the Gilli reference, which is followed, at column 6, lines 16-24, by more details, wherein it is stated that the post-pacing timeout is a *programmed* period of time following the antitachyarrhythmia therapy. It is stated that programming may be performed by a physician either just prior to implantation, or may be changed after implantation through a telemetry circuit 38.

Therefore, the clear teaching of the Gilli reference is that the time period upon which reversion to the original bradycardia pacing mode takes place is a set time, i.e., it is not extendible, and it is not extendible depending on sensed cardiac activity. Although the Gilli reference, as noted above,

affords the possibility of a physician re-programming the device to change this time interval, it is still the case in the Gilli apparatus that, once set, this time interval does not change unless and until such a re-programming takes place.

The Levine reference was relied upon by the Examiner solely for the purpose of disclosing the conventional use of an auto-capture mode, and the Levine reference provides no teachings regarding such an interval, because such a time interval is not relevant to the operation of the device disclosed in the Levine reference.

With regard to the rejection of claims 16, 17 and 21-24, the Examiner noted that the Grevis et al reference discloses time intervals in a range between one minute and fifteen minutes. Applicants also acknowledge that these time intervals can be adjusted. As discussed in the telephone interview, however, these time intervals are intervals between the execution of a first antitachycardia routine or regime, and the implementation of a further, more aggressive tachycardia routine. These time intervals have no relation whatsoever to reversion of the pacemaker back to a bradycardia pacing mode.

If the Gilli reference were modified in accordance with the teachings of Grevis et al, this would simply mean that the time intervals in the antitachycardia mode of Gilli would be set according to the teachings of the Grevis et al reference. The teachings of Gilli would still be employed, however, for the time interval that must elapse for reversion to the normal bradycardia pacing mode, as noted above, this time interval, in accordance

with the explicit teachings of Gilli, is not adjustable, but is instead a preprogrammed time interval.

Therefore, clearly the Gilli and Levine references do not disclose or suggest the subject matter of original dependent claim 18, and even if that combination were further modified in accordance with the teachings of Grevis et al, the subject matter of claim 18 still would not result.

As a result of the presentation of these arguments in the telephone interview, it was agreed that the current prior art of record does not disclose or suggest the subject matter of claim 18. It was agreed that an after-final Amendment, wherein the subject matter of claim 18 would be embodied in the subject matter of claim 14, would be entered. The Examiner stated she would, as required, undertake updated searching, and if the updated searching did not result in more relevant prior art being located, the application would be allowed.

In accordance with the agreements reached at the interview, therefore, the present Amendment is being filed wherein the subject matter of claim 18 has been embodied in claim 14, and claim 18 accordingly has been cancelled. Editorial changes have been made in claims 19 and 25 in view of the inclusion of the subject matter of claim 18 in claim 14.

In view of the agreements reached at the interview, the present Amendment does not raise any new issues requiring further searching or consideration, and entry thereof is respectfully requested.

All claims of the application are submitted to be in condition for allowance, and early reconsideration of the application is also respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required, or to credit any overpayment to account No. 501519.

Submitted by,

          /STEVEN H. NOLL/          (Reg. 28,982)  
SCHIFF, HARDIN LLP  
**CUSTOMER NO. 26574**  
Patent Department  
6600 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606  
Telephone: 312/258-5790  
Attorneys for Applicants.

CH116145603.1